

## **COMPETITIVE SEALED BIDDING (INVITATION FOR BIDS)**

With the exception of procurements for human, social, cultural or educational services, and real property leases, the Competitive Sealed Bidding method is preferred for the procurement of goods and services. This method requires the procuring unit to itemize the services to be performed in such detail that the only determinant factor is price. The basis for award under this method is either the “most favorable bid price” or the “most favorable evaluated bid price.”

As required by COMAR 21.05.02.01<sup>1</sup>, an Invitation for Bids will include:

- a. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids and the address where bids are to be delivered;
- b. The purchase description, delivery or performance schedule, and any special instructions necessary;
- c. Whether award shall be made on the basis of the most favorable bid price or the most favorable evaluated bid price, whichever is applicable. If the latter basis is used, the objectively measurable criteria to be used shall be set forth in the invitation for bids; and,
- d. The mandatory solicitation requirements as set forth in COMAR 21.05.08.

Each Invitation for Bid (IFB) will require that every prospective bidder to acknowledge the receipt of all amendments, addenda, and changes issued. Failure on the part of a bidder to acknowledge receipt of an amendment, addenda or change may render the bidder’s bid non-responsive.

### **Multi-Step Sealed Bidding**

“Multi-step sealed bidding” means a two-phase process in which bidders submit un-priced technical offers or samples, or both, to be evaluated by the State and a second phase in which those bidders whose technical offers or samples, or both, have been found to be acceptable

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<sup>1</sup>All Code of Maryland Regulations are cited in the order of Title, Subtitle, Chapter, Sub-chapter, and Paragraph. Thus, the cite for COMAR Title 21 (State Procurement Regulations), Subtitle 05 (Procurement Methods), Chapter 02 (Procurement by Competitive Sealed Bidding), Sub-chapter 01 Invitation for Bids would be made COMAR 21.05.02.01. To see the complete text of Maryland’s procurement regulations, go to the Division of State Documents Website and click on COMAR On-line at: <http://www.dsd.state.md.us>.

during the first phase have their price bids considered. Multi-step sealed bidding may be used when it is determined by the procurement officer, with the approval of the agency head or designee and the appropriate control authority, that it is impracticable to initially prepare specifications to support an award based solely on bid price.

- a. Once the technical offer or samples, or both, have been evaluated and accepted, price bids from only those vendors whose technical offers or samples, or both, have been found acceptable shall be publicly opened and evaluated in accordance with this chapter.
- b. Price bids may be solicited at the same time as technical offers, in separate sealed envelopes, or after evaluation of technical offers, only from those whose technical offers have been found acceptable.
- c. Price information may not be opened until the technical evaluation is complete. Price information from vendors whose technical offers have been found unacceptable shall be returned unopened.

### **Public Notice**

Notice is given to prospective vendors that an administration, facility, or unit needs to have a certain type of service performed. Prospective vendors/bidders are invited to submit bids for the services outlined in the specifications. The appropriate public notice practices required under COMAR 21.05.02.04, i.e. publication of the solicitation in the *Maryland Contract Weekly Online* for a minimum of 21 days, direct solicitation of known providers of the service<sup>2</sup> (especially MBE vendors), and posting of the solicitation on the Department's web site or in *e-Maryland Marketplace*.<sup>3</sup>

### **Pre-Bid Conference**

A pre-bid conference is routinely held at least two weeks prior to the bid due date to review the IFB with prospective bidders and to provide an opportunity to ask questions or possibly suggest changes in the IFB. Attendance is encouraged but is not mandatory. A written record will be prepared and distributed to everyone known to receive the IFB when the resulting contract is expected to exceed \$100,000.

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<sup>2</sup> Vendors' known to provide the needed services should be directly solicited. The IFB, or a Notice of Availability of the IFB (see COMAR 21.05.02.04), is to be sent to a sufficient number of vendors to guarantee a robust competition.

<sup>3</sup> eMaryland Marketplace is an on-line, web based procurement portal, which allows Maryland Governments (State, county and local) and vendors to interact in a paperless environment. The portal supports both interactive bidding and catalogue purchasing on the web at: <http://www.emarylandmarketplace.com/emm/index.cfm?page=home>.

## **Bid Opening**

Upon its receipt, each bid and modification shall be stored in a secure place until the time and date set for bid opening. Before bid opening the State may not disclose the identity of any bidder. Bids and modifications shall be opened publicly, at the time, date, and place designated in the invitation for bids. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. This information shall also be recorded at the time of bid opening. The bids shall be tabulated or a bid abstract made. The opened bids shall be available for public inspection at a reasonable time after bid opening, but in any case before contract award, except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Md. Code Annotated, State Gov., §10-611 et. al. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available at a reasonable time after bid opening but in any event before contract award regardless of any designation to the contrary at the time of bid opening. The procurement officer will examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

## **Discussions**

Discussions are not held with this procurement method. Further, this method does not permit negotiations with any bidder. If however, the procurement officer knows or has reason to conclude that a mistake has been made on the most favorable bid, the bidder may be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges a mistake(s), the bid may be corrected or withdrawn upon the written approval of the Office of the Attorney General if any of the following conditions are met:

- a. If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- b. A bidder may be permitted to withdraw a low bid if:
  1. A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  2. The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.

Mistakes may not be corrected after award of the contract except when the procurement officer

and the head of a procurement agency make a determination that it would be unconscionable not to allow the mistake to be corrected. Changes in price are not permitted. Corrections shall be submitted to and approved in writing by the Office of the Attorney General. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the procurement officer shall prepare a determination showing that the relief was granted or denied in accordance with COMAR 21.05.02.

### **Tie Bids**

Tie bids are responsive bids from responsible bidders that are identical in price, terms, and conditions and which meet all the requirements and evaluation criteria set forth in the invitation for bids. The award shall be made to the in-State business if identical favorable bids are received from an in-State and out-of-State bidder. In order for a procurement agency to achieve its overall minority participation goal a contract may be awarded as follows pursuant to COMAR 21.11.03.10A(1):

- a. If identical favorable bids are received from an in-State certified minority business enterprise and an in-State non-minority business enterprise, or an out-of-State certified minority business enterprise and an out-of-State non-minority business enterprise, the award may be made to the certified minority business enterprise.
- b. If identical favorable bids are received from tying in-State or out-of-State certified minority business enterprises, the award may be made to the certified minority business enterprise having the greatest amount of certified minority business enterprise participation in the particular contract as determined after obtaining the information required under COMAR 21.11.03.10B(2)-(6).
- c. If identical favorable bids are received from tying in-State or out-of-State non-minority business enterprises, the award may be made to the non-minority business enterprise having the greatest amount of minority participation in the contract, including staff, or certified minority business enterprise subcontract participation in the contract as determined after obtaining the information required under COMAR 21.11.03.10B(2)-(6).
- d. If identical favorable bids are received from in-State bidders or from out-of-State bidders, and no rules for implementing a procedure for resolving a tie bid are present in the contract, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.
- e. Records shall be made of all invitations for bids on which tie bids are received and a copy will be forwarded to the Office of the Attorney General.

## **Bid Evaluation and Award**

The contract will be awarded to the responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and is either the most favorable bid price or most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids. Bids shall be evaluated to determine which bidder offers the most favorable price to the State in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the most favorable evaluated bid price. Nothing in COMAR 21 shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if that bid is not also the most favorable bid.

The State reserves the right to make the award by item, or groups of items, or total bid if it is in the best interest of the State to do so unless the bidder specifies in its bid that a partial or progressive award is not acceptable. Upon determination of the most favorable bid, review of the bid for responsiveness, and satisfaction that the bidder is responsible, the procurement officer shall, after obtaining all required approvals, award the contract to that bidder.

## **Non-Responsive Bids**

If a bidder is declared non-responsive, they will be notified in writing via certified mail. The bidder is then given an opportunity to contact the procurement officer for a detailed explanation on why they were declared non-responsive and what could be done in the future to prevent reoccurrence. The most common reasons a bidder is determined non-responsive are:

- Alteration of the bid form.
- Failure to respond or bid on all items within the IFB, including options.
- Failure to acknowledge amendments, addenda, and changes issued.
- Alteration of the requirements within the IFB.